

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant: Emily Wadham, dba Tabella Restaurant LLC

Date application filed with the Town Clerk: March 21, 2006

Nature of request: A Special Permit to operate a Class II restaurant, serving alcohol, offering live acoustic, non-amplified entertainment and seasonal outdoor dining, under Sections 3.352.1, 5.041 and 5.042 of the Zoning Bylaw

Address: 28 Amity Street (Map 14A, Parcel 254, B-G Zoning District)

Legal notice: Published on April 12 and April 19, 2006 in the Daily Hampshire Gazette and sent to abutters on April 12, 2006

Board members: Ted Rising, Barbara Ford and Jane Ashby

Submissions: The petitioner submitted a management plan, a sample menu, and a set of plans drawn by Kuhn Riddle Architects, dated 2/27/06. The plans depict the interior and outdoor floor layout of the restaurant, the exterior elevations, the sign dimensions/design, and a simulated picture of the outdoor dining area.

The zoning assistant submitted a memo, dated 4/21/06, which reviewed some zoning issues and some details of the application.

Site Visit: April 25, 2006

The Board met with applicant Emily Wadham and business partner Adrian d'Errico at the Amherst Cinema building, the site of the proposed restaurant. Barry Roberts, owner of the building, also was present. The Board observed the following:

- The location of the building in the heart of downtown Amherst, abutting other businesses, banks, two parking lots and the Town library.
- The exterior of the Amherst Cinema building, currently under renovation
- The covered walkway along the easterly side of the building that will provide access to the proposed restaurant at the rear of the building
- The fenced terrace for outdoor dining, separated from the indoor restaurant by the walkway
- The interior space of the building where the proposed restaurant will be located, which will include two universally accessible restrooms, a large kitchen and storage area, a bar, and an ample dining area

Public Hearing: April 27, 2006

Emily Wadham and Adrian d'Errico spoke to the petition at the hearing. They gave the following information:

- Ms. Wadham operated a restaurant for a number of years in Shelburne Falls, and now wishes to operate a restaurant in Amherst. Mr. d'Errico is her partner.
- The proposed restaurant will be a full service one, using fresh, local produce prepared in the Southern Mediterranean tradition of *tapas*.
- Both the year-round indoor and seasonal outdoor seating will be full service during all hours of operation.
- The normal hours of operation will be 11 a.m. – 12 a.m. Monday through Saturday, and 10 a.m. – 12 a.m. on Sunday.
- Service of food will occur at all times when the restaurant is open. The kitchen will continue to prepare food until ½ hour prior to closing; service of alcohol will cease ½ hour before closing as well.
- The outdoor terrace will be fenced on all 4 sides, with one main entrance and one secondary egress along the walkway. A hostess will staff the terrace at all times.
- Linens will be on both the terrace and indoor tables. There will be no disposable plates, glassware or flatware.
- To protect from breakage, glassware will be of a more durable quality on the terrace; the terrace has a floor of brick-shaped concrete pavers.
- Patrons will not be able to carry drinks from the bar to the terrace. A waiter will carry all drinks to those on the terrace.
- There is seating for 40 at tables on the terrace, but there will be some additional seating in the corner by the hostess station for customers waiting to be seated. The extra seating will keep the walkway open for the public and will allow for better movement of staff.
- Bar seating indoors (16 seats) is included with the indoor seating count (42 seats). Tables provide the bulk of the seating
- Background music via a sound system will be available inside. Occasionally there could be live acoustic non-amplified music indoors (guitar or string quartet, for example). Noise will not be heard outside the walls of the restaurant.
- They would like to have live music on the terrace occasionally as well – a cello, for example, for a wedding reception or other special function.
- The recorded background music will be for atmosphere only. Food will be the primary focus of the business.
- Flower boxes are planned for the inside the railing on the terrace. There will be some plants on the inside as well.
- There will not be dancing. Again, the emphasis of the business will be food.
- The outdoor tables may permanently be bolted to the floor. If this isn't possible, they will be stored over the winter months. Chairs will be removed between November and April.
- The Design Review Board will be reviewing the outdoor furniture as well as the signs.
- The sign dimensions are 1 x 3 feet. Design and locations are as shown on the submitted plans. The applicants are proposing three identical signs – two on each side of the north-east corner of the terrace fencing and a blade sign above the walkway by the restaurant entrance. The directory sign for the building along Amity Street will carry the restaurant name – *Tabella Restaurant* - as well.
- One large window at the front of the restaurant can open, and will be screened.

Mark Snow, Assistant Building Commissioner, cautioned that the public walkway between the restaurant and terrace must be kept open at all times. The applicants assured the Board that it would be kept free for pedestrians.

Mr. Snow also asked about the elevation of the building's walkway at the northerly end of the terrace. Mr. Roberts, owner of the building, said that there is a one-foot step onto the walkway at that point from the driveway to the east of the walk.

Mr. Rising asked whether there will be steps to access the east-west public walkway at the southern end of the terrace. Mr. Roberts replied that he looked into the possibility of eliminating the steps at that location, but cannot do so. The east-west walkway slopes upwards to the westerly exit to the bank parking lot. Mr. Roberts said that he must maintain the grade of that walkway in order to have proper drainage at the easterly end of that walkway. Water from several buildings will drain into the storm-drain at south-east corner of his property. Hence the storm-drain must be lower, and one 8" step is necessary for the walkway. Both walkways are accessible via wheelchairs however. The north-south walkway along the eastern side of the building is wheelchair accessible from Amity Street and the east-west walkway is wheelchair accessible from the westerly side of the building via the bank parking lot.

Two members of the public spoke at the hearing. Peter d'Errico of 340 Long Plain Road, Leverett and Katia d'Errico, 141 Farview Way, Amherst both supported the application for the restaurant.

Ms. Ford made a motion to close the evidentiary portion of the hearing. Ms. Ashby seconded the motion, and the vote was unanimous to close the hearing.

Public Meeting:

The Board discussed the requirements for a Class II restaurant, Section 3.352.1 of the Zoning Bylaw. Unlike the previous Special Permit that was issued for this location (but never realized, ZBA FY2005-00038) the terrace will be an integral part of the restaurant with full service requested for it. Given that a railing will completely surround the terrace, access will be limited to restaurant patrons only and a hostess for the terrace will be stationed at the terrace entrance, the Board found that the conditions for an indoor/outdoor full service restaurant under Section 3.352.1 have been met.

Ms. Ashby expressed concern about live entertainment on the terrace impacting other businesses in the area. The Board agreed that the hours of live music on the terrace should be limited to no later than 9 p.m. and that it should not be amplified. Similarly, live music inside the restaurant should end at midnight, the Board noted.

The Board also noted that the conditions of the permit should reflect the latest time that the applicant might have the restaurant open, as long as alcohol ceases to be served at 1 a.m. and the restaurant closes at 1:30 a.m. The petitioner had requested 12 midnight closing, and 1 a.m. closings for special events only. But the Board agreed that a consistent 1 a.m. closing for every day, Sunday through Saturday, would be easiest to track. The petitioner then could be flexible in setting her own hours of operation within that 1 a.m. limit

The experience of the applicant with a successful restaurant in the past, plus clear management plans from both the applicant and the building owner enabled the Board to find that all of the conditions of Section 3.352.1 for a full service restaurant were met.

Public Meeting – Findings:

The Board finds under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed, because the building and surrounding area has a mix of uses (restaurants, shops, offices, banks, library, etc) suitable to a B-G zoning district.

10.382 & 10.385 – The proposal would not constitute a nuisance due to flood, noise, lights or visually offensive structures since the building's restoration includes additional drainage that will service the surrounding buildings as well; lighting will be downcast, and the conditions of the Special Permit will control excess noise of music patrons.

10.383 & 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians since abutters to the east will have continued access to the back of their buildings, emergency vehicles can reach all sections of the building as well as the surrounding buildings, and pedestrians will have two covered walkways for access to the restaurants, shops and/or theaters.

10.384 – Adequate and appropriate facilities would be provided for proper operation of the restaurant because the space is large enough to accommodate the needs of the patrons and staff, including seating, kitchen space and universally accessible restrooms. The fumes from the kitchen will be vented to the roof.

10.386 – The proposal ensures that it is in conformance with Parking and Sign regulations since the building is located in the municipal parking district and does not need on-site parking. Signs will be submitted for approval at a business meeting of the Board.

10.388 – The proposal ensures adequate space for off-street loading and unloading of goods and products in that off-street loading/unloading will take place from the parking lot on the west side of the building to an entrance into the kitchen area, removed from the customer entrance.

10.389 – The proposal provides adequate methods of disposal - the building is connected to Town water and sewer; the building owner will provide receptacles for refuse and recyclables for each business in the building, and will provide a gated refuse area at the back of the property. The petitioner's Management Plan states that the waste oil will be picked up every three days and will be donated to the Seed of Solidarity Farm for use in their alternative fuel program.

10.391 – The proposal protects, to the extent feasible, unique and important historic features because the original 100+ year old building has been carefully restored, not demolished. The interior and terrace area of the restaurant are new, but the historic features of the building's exterior have been respectfully restored.

10.392 – The proposal provides adequate landscaping and screening to the extent possible. The site currently is non-conforming as to coverage, with almost 100% coverage. The applicant is providing flower boxes along the railing of the terrace, and plantings inside the restaurant; the building owner said that he will provide plantings in as many areas inside and outside the building as possible.

10.396 – The proposal provides screening for storage areas, dumpsters, and similar features because the dumpsters will be screened, the rooftop equipment will be screened, and other storage will occur within the building or basement area.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw in that the restoration of the building and the addition of this new restaurant will promote the economic viability of the downtown, thus promoting the general welfare of the inhabitants of Amherst.

Zoning Board Decision

Ms. Ford made a motion to APPROVE the application with conditions. Ms. Ashby seconded the motion.

For all the reasons stated above, the Board VOTED unanimously to GRANT a Special Permit to Emily Wadham to operate a Class II restaurant with alcohol, live acoustic, non-amplified

entertainment and seasonal outdoor dining, on the premises at 28 Amity Street (Map 14A, Parcel 254, B-G Zone), under Sections 3.352.1, 5.041 and 5.042 of the Zoning Bylaw, subject to conditions.

TED RISING

BARBARA FORD

JANE ASHBY

FILED THIS _____ day of _____, 2006 at _____,
in the office of the Amherst Town Clerk _____.
TWENTY-DAY APPEAL period expires, _____ 2006.
NOTICE OF DECISION mailed this _____ day of _____, 2006
to the attached list of addresses by _____, for the Board.
NOTICE OF PERMIT or Variance filed this _____ day of _____, 2006,
in the Hampshire County Registry of Deeds.

Town of Amherst
Zoning Board of Appeals
SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit to Emily Wadham to operate a Class II restaurant under Sections 3.352.1, 5.041 and 5.042 of the Zoning Bylaw, with alcohol, live acoustic, non-amplified entertainment and seasonal outdoor dining, on the premises at 28 Amity Street (Map 14A, Parcel 254, B-G Zone with the following conditions:

1. The restaurant shall be operated according to the Management Plan approved by the Board at the public meeting April 27, 2006, and on file with this permit.
2. The floor plan, seating, terrace design and sign locations shall be as shown on the plans drawn by Kuhn Riddle Architects and approved by the Board at the public meeting April 27, 2006.
3. Proposed signs and outdoor dining chairs/tables/umbrellas shall be submitted to the Design Review Board for review prior to being presented to the ZBA for review and approval at a public meeting.
4. Hours of operation for the restaurant shall be:

11:00 a.m. to 1:00 a.m.	Monday through Saturday
10:00 a.m. to 1:00 a.m.	Sunday
5. Food shall be served at all times when alcohol is served.
6. There shall be a maximum of 12 employees on the premises at one time.
7. All employees who are involved with the service of alcohol shall have first received ServSafe Alcohol training.
8. No alcohol shall be taken to the outdoor dining area by customers. Only wait staff shall transport drinks to the terrace area.
9. The petitioner shall be responsible for maintaining the outdoor dining area, keeping it clean and free of litter and debris.
10. Except for furniture permanently installed on the terrace, all outdoor furniture shall be removed from the outdoor dining area and stored between November 1 and April 1.
11. Live entertainment on the restaurant terrace shall not be amplified, and shall end by 9 p.m.
12. Live entertainment inside the restaurant shall end by midnight
13. Recorded music may be broadcast inside the restaurant only. There shall be no music broadcast outside the restaurant. The volume of sound generated by music from the restaurant shall not exceed average background sound levels outside the restaurant.
14. There shall be no disposable utensils, plates or cups used in the outdoor dining area.
15. There shall be no low-level lighting within the restaurant during live entertainment.
16. Exterior lighting shall be downcast, according to the master plan for the entire building.
17. The public walkway separating the indoor restaurant from the terrace shall be kept open at all times for pedestrian traffic.
18. Deliveries shall be made to the entrance on the westerly side of the building and before 11 a.m.
19. This permit shall expire upon change of ownership of the restaurant, and shall be reviewed at a public meeting of the Board upon change of management.

TED RISING, Chair
Amherst Zoning Board of Appeals

DATE